

## REMARKS

Claim 1 has been amended to specify that the magazine comprises a generally rectangular storage cell having a plurality of storage chutes, the chutes defined by front and back surfaces and a pair of opposing interior chute walls. Claim 6, indicated as being allowable if properly presented and including all limitations of the base claim, has been canceled and a new claim 7 comprising such matter has been presented for purposes of simplicity.

### ***Drawing Objections –37 CFR §1.83(a)***

The drawings are objected to for failing to illustrate the locking tabs formed on the “lower portion of the band” as recited in claim 5 as well as the element referred to as a “bottom”.

In response to the first point, claim 5 has been amended to correctly specify that the locking tabs (83T) are formed on the “upper portion of the band” as illustrated in Fig. 7 and described at lines 3-6 in paragraph [0033].

In response to the second point, replacement Figures 7, 8 and 11 are supplied herewith and having the bottom of the cuvette magazine 80 identified as “bottom 95”. A replacement paragraph [0035] having the numeral “95” added forms part of this Response. It is believed that no new material has been added since the bottom of the cuvette magazine 80 was originally disclosed in as-filed paragraph [0035].

### ***Claim Rejections –35 USC §112***

Claims 2-4 are rejected under 35 USC 112, second paragraph, as being unclear for failing to point out and distinctly claim subject matter regarded as the invention.

In response, Claim 2 has been amended to specify that cuvette openings are also formed at the back surface of the magazine as seen in Fig. 8. Claim 1 has been amended to provide antecedent basis for the “interior chute wall” in claim 3 and to

replaced "number of" with "plurality of". Finally, the dimensional limitation of the pad relative to the chute has been eliminated in claim 3 and claim 4 has been canceled.

***Claim Rejections –35 USC §102***

Claims 1 and 5 are rejected under 35 USC 102(b) as being anticipated by Billet et al. (US 5,921,453) The Examiner alleges that Billet discloses a dispenser or magazine having curved front and back wall surface with chutes formed by dividers. However, a close examination of Billet shows that the front and back walls are not curved and are actually flat, as explained below.

Billet's dispenser 10 comprises a rack assembly 20 or 320, wherein "the rack assembly 320 comprises an enclosed rectangular box-shaped rack assembly 324" (Col. 7, lines 5-7). The Examiner's attention is called to Fig. 9, a sectional view along line 9-9 of Fig. 7, wherein Billet's front and back walls (not numbered but enclosing chutes 328-340) are flat and are parallel to one. The front rack assembly 324 is shown in Figs. 7 and 9 as enclosed within an insulation fabric cover 319 that has a front panel 392 and a rear or back panel 396. Fig. 9 clearly illustrates these insulation front and back panels 392 and 396 as flat and parallel with the front and back walls of the rack assembly portion of Billet's dispenser 10. For convenience, a copy of Billet's Fig. 9 with the flat front and back walls marked in red and the front and back panels in yellow is enclosed with this communication.

In order for Billet to anticipate applicants' invention, Billet must disclose each and every claimed feature of applicants' invention. Because Billet does not have curved front and back walls as claimed, Billet fails to qualify as prior art under 35 USC 102(b). For this reason, applicants respectfully request that the rejections of Claim 1 and 5 over Billet be withdrawn.

***Claim Rejections –35 USC §103***

Claims 1-5 are rejected under 35 USC 103(a) as being obvious over Terashima (US 5536472) in view of MacIndoe (US 5332549). The Examiner cites Terashima for disclosing a test element cartridge or magazine having a generally rectangular body with a take out port and ledges, pads tabs and ribs. Tershaim does not teach the

curved shape of the front and back walls, however the Examiner asserts that magazines of such shape are well known in the art and cites MacIndoe as an example.

The Examiner then suggests that it would have been obvious to modify Terashima's magazine to have curved front and back walls "in order to more conveniently interface test element supply units with related equipment of circular shape." Applicants traverse this suggestion and turn to Kelln (US 5,250,440) to illustrate the practice of those skilled in the art when rectangular-shaped test elements, like those of Terashima (see Fig. 2) are contained in a plurality of adjacent chutes. Gebrian, mentioned later, also teaches the use of generally rectangular shaped magazines when housing generally rectangular elements, even when the magazines are to be interfaced with circular turntable machine portions (see Fig. 1, circular inventory chamber 22 interfaced with generally rectangular canister 18 housing generally rectangular cuvettes 12, Col. 10, lines 25-30).

Like Terashima, Kelln is concerned with generally rectangular elements (see cuvette 10 in Figs. 7 and 8 of Kelln). Kelln's rectangular cuvettes 10 are stacked atop one another in a magazine 40 in Fig. 9. Kelln's cuvettes 10 are to be placed into slots 54 in a circular turntable 11 (Fig. 11). If the Examiner was correct in making the suggestion that magazines housing rectangular elements would be adapted with curved front and back walls "in order to more conveniently interface test element supply units with related equipment of circular shape", then Kelln, who is interfacing a rectangular cuvette supply unit 40 with a circular turntable 11, would modify a plurality of adjacent supply units or magazines 40 into a circular shape with curved front and back walls.

Instead, and in contrast to the Examiner's suggestion, Kelln aligns a plurality of rectangular cuvette supply units in a rectangular pattern with flat front and back walls. Fig. 18 best illustrates such a rectangular box 75 having slots for receiving magazines 40 of cuvettes 10 and Fig. 17 shows how this rectangular box 75 interfaces with circular turntable 11. In other words, when a person of ordinary skill in the art is faced with the problem of interfacing rectangular element supply units with circularly shaped equipment, the prior art teaches against applicants' invention wherein a magazine having curved front and back walls is used to house a plurality of rectangular elements. For this reason, the Examiner's rejection of claims 1-5 as being obvious under 35 USC

103(a) over Terashima (US 5536472) in view of MacIndoe is believed to be overcome and is requested to be withdrawn.

***Double Patenting***

Claim 1 is rejected as being unpatentable over claim 1 and 2 of Gebrian (US 6632654). The Examiner recognizes that the claims are not identical but suggests that instant claim 1 is encompassed by claims 1-2 of Gebrian. Applicants respectfully traverse this suggestion because Gebrian's canister comprises a generally rectangular cross-section having flat sides. The argument presented with respect to Kelln applies also in the case of Gebrian. Gebrian's canister houses a plurality of generally rectangular test elements 12 (Fig. 6) in a generally rectangular canister 18 (Fig. 7b), again the practice taught by the prior art. In contrast to the teachings of the prior art, applicants' magazine, that houses generally rectangular cuvettes 24 (Fig 5), has curved front and back walls. For this reason, claim 1 of the instant invention is believed to be patentably distinct from claims 1 and 2 of Gebrian; it is respectfully requested that the double patenting rejection of claim 1 be withdrawn.

***Conclusion***

Applicants believe that this application contains patentable subject matter and that the foregoing amendments provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicants' representative at the number provided below.

Respectfully submitted,

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